

LETTER OPINION
95-L-99

April 24, 1995

Mr. John R. Gregg
Dunseith City Attorney
P.O. Box 26
Bottineau, ND 58318-0026

Dear Mr. Gregg:

Thank you for your March 15, 1995, letter asking whether a city has the power to own and operate a nursing home.

Local governmental entities have only those powers expressly granted to them by the Legislature, or those necessarily implied from the power expressly granted. See, e.g., Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970); Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924).

The powers of municipalities are generally found in N.D.C.C. ch. 40-05. N.D.C.C. ? 40-05-02(10) specifically provides that the city council in a city operating under the council form of government has the power "[t]o establish, control, and regulate hospitals and medical dispensaries." As generally understood the term "hospital" includes nursing homes. See St. Vincent's Nursing Home v. Dept. of Labor, 169 N.W.2d 456 (N.D. 1969) (finding nursing home to be exempt from Labor-Management Relations Act because it is a hospital); The American Heritage Dictionary, 624 (2d coll. ed. 1991) (defining "hospital" as an institution that provides medical care and treatment for the sick and the injured, a home for old people); Genuth v. Hynes, 384 N.Y.S.2d 866, 867 (N.Y. App. Div. 1976) (a nursing home falls within the definition of a hospital); Reserve Life Ins. Co. v. Marr, 254 F.2d 289, 291 (9th Cir. 1958) (licensed nursing home deemed hospital for purposes of insurance coverage). "To establish" is generally understood to mean to find, to institute, to create, and to set up or continue the operation of. See Youtsey v. Cty. Debt Comm'n, 501 S.W.2d 266, 268 (Ky. App. 1973); Dairy Transport Ass'n v. Decker, 248 N.Y.S.2d 672, 674 (1963). Thus, a municipality's power to "establish, control, and regulate hospitals" as stated in N.D.C.C. ? 40-05-02(10) includes the power to set up and operate nursing homes. See also N.D.C.C. ? 21-03-06(2)(a) (municipalities are empowered to borrow money

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and issue bonds for the purpose of the erection, purchase, construction, enlargement, or repair of hospitals); 1970-72 N.D. Op. Att'y Gen. 250 (hospitals, under N.D.C.C. ? 21-03-06(2)(a), includes nursing homes).

N.D.C.C. ch. 40-57, the Municipal Industrial Development Act, also authorizes municipalities to construct, finance, and operate nursing homes. N.D.C.C. ch. 40-57 authorizes municipalities to engage in certain projects, including providing nursing home facilities and service. N.D.C.C. ? 40-57-02(3). In prior opinions this office has held that the Municipal Industrial Development Act does authorize municipalities to own and operate medical facilities, including nursing homes. See 1970-72 N.D. Op. Att'y Gen. 245; 1970-72 N.D. Op. Att'y Gen. 250. After these opinions were issued, N.D.C.C. ? 40-57-02(3) was amended to include hospitals and nursing homes as "projects" under chapter 40-57. Thus, chapter 40-57 now even more explicitly authorizes municipalities to own and operate nursing homes.

Pursuant to N.D.C.C. ch. 23-18.2, a municipality may also cooperate with county nursing home authorities with respect to the development or administration of nursing home projects. Chapter 23-18.2 provides for the creation of a county nursing home authority by election. See N.D.C.C. ? 23-18.2-03. Section 23-18.2-10(6) specifically provides that the nursing home authority has the power to "construct, acquire, lease, and operate nursing homes within its area of operation." Pursuant to section 23-18.2-28, a municipality has the right and power to cooperate with nursing home authorities with respect to the development or administration of nursing home projects.

In conclusion, it is my opinion that a municipality has the power to establish nursing homes. It is further my opinion that a municipality may avail itself of the provisions of the Municipal Industrial Development Act in building or providing for nursing homes.

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

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